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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/658,209 | 09/10/2003 | Barry H. Ginsberg | 45716 | 3221 |

7590 09/29/2008
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| EXAMINER |
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NASSER, ROBERT L

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| ART UNIT | PAPER NUMBER |
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3735

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09/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/658,209 | Applicant(s) GINSBERG, BARRY H. | |
| | Examiner ROBERT L. NASSER | Art Unit 3735 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 7, 15-21, 27, 28, 35, 36, 38-43, 53-62, 65 and 67-69 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 9, 11, 12, 22-25, 29, 30, 32, 33, 44-48, 50, 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-4,6-9,11,12,15-25,27-30,32,33,35,36,38-48,50,51,53-62,65 and 67-69.

The examiner notes that the drawings filed 12/15/2003 have been received. Upon allowance of the case, the drawings will be evaluated for conformance, although they appear to the examiner to be acceptable.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8, 9, 11, 12, 22-25, 30, 32, 33, 43-46, 50, and 51 are rejected under 35 U.S.C. 102(e) as anticipated by Causey III et al 6558320 or, in the alternative, under 35 U.S.C. 103(a) as obvious over Causey III in view of Smith 5108889 and Drinan et al 2002/022773. Causey teaches a device for making multiple measurements of glucose values, and computing an average value of the glucose values, and then allowing a user to scroll through a display sequence that includes the individual values (See column 11, lines 6-8). As such, it receives a user request to annunciate the average and each of the individual measured values in a scroll like (round robin) sequence. Hence, there is a first area for displaying constituent values. The examiner notes that Causey does not state that an indicator is displayed in a second display area. The examiner notes that Smith shows a method to scroll through constituent data, where a time indicator is displayed with the data (see column 55, beginning at line 60). Hence, it would have been obvious to modify Causey to display an indication of the time for each sample, so as to alert the user of when the data has been obtained. The examiner

Art Unit: 3735

notes that since each data point has a different time reference, then the device displays n indicators with n data points. In addition, since the indicator is separate from the data on the display, they are displayed in first and second areas. However, the combination displays one constituent at a time. Drinan teaches in paragraph 5 another method of scrolling through data, where all of the indicators are displayed, but the indicator of the data currently being displayed is indicated differently than the others. Hence, it would have been obvious to modify the combination to use such a method of scrolling through data, as it is the simple substitution of one known display method for another.

Alternatively, there are a finite number of identified ways to display the data and it would have been obvious to try the method of Drinan. With respect to claim 4, Causey does not state how many values are used in the average. However, the examiner takes official notice that it is well known to provide an average value with more than 2 values, to provide a more accurate average. Hence, it would have been obvious to modify to use more than 2 values in the average, in order to provide a better picture of the overall patient condition. As such, the third and so on values would be annunciated sequentially until the last value has been annunciated. Claim 11 is rejected in that the exact form of the indicators on the display has not been disclosed to be for a particular purpose or to solve a stated problem. As such, the exact form would have been a mere matter of design choice for one skilled in the art, as all indicators appear to function equally as well as the others. Claim 12 is rejected in that the time and day are also displayed, such that the second display area is the time and the third area is the date. Claim 22 is rejected in that there is an input device to scroll through the data. Claim 43

Art Unit: 3735

is rejected in that the exact form of the input device would have been a mere matter of design choice. Claims 25, 29, 30, 32, 33, 45, 46, 50, and 51 are rejected for the reasons given above.

Claims 35, 36, 70, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Causey III in view of Smith and Drinan et al, as applied to claims 1-4, 8, 9, 11, 12, 22-25, 30, 32, 33, 43-46, 50, and 51 above, further in view of Bortz 2003/0216628. In addition to the features of Causey III discussed above, Bortz lets a user select from among multiple time periods each day over which to calculate an average {see paragraphs [0024]-[0027]}. Such a procedure allows the user to have a more accurate picture of their glucose readings throughout the day. As such, it would have been obvious to modify Causey to allow average values to be calculated for multiple daily time periods, to enable more precise control of a users glucose levels. The time periods in Bortz include post-meal and night.

Claims 6, 7, 15-21, 27, 28, 35, 36, 38-43, 53-62, 65, and 67-69 are allowable.

Claims 6, 7, 27, 28, 47, and 48 define over the art in that none of the art displays the variability indicator as claimed.

Claims 15-21, 35, 36, 38-43, 53-62, 65, and 67-69 define over the art in that none of the art selects a stored data point to display if the time period has not passed, as claimed.

Applicant's arguments filed 12/14/2007 have been fully considered but they are moot in view of the new grounds of rejection.

Applicant has stated that since the examiner did not state where in Smith the alleged subject matter was, that any reliance on Smith in this action should result in a non-final action. The examiner disagrees. There is no requirement that the examiner supply a line number. Applicant is capable of reading the reference and determining whether the reference has the material. Indeed, applicant actually referred to the proper passage in the response. As such, it is the examiner's position that this action is properly final.

The specific arguments with respect to Smith have been deemed moot in view of the new grounds of rejection.

As to claim 11, applicant has noted that flashing the indicators allows the user to know which data is part of the average. The examiner notes that flashing the indicators is not a solution to this problem, but displaying all of the constituents is. Hence, the record is devoid of any reason for flashing the indicator of the current data point being displayed.

As to claim 12, it is the examiner position at the time is the second area and the date is the third area.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3735

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/
Primary Examiner, Art Unit 3735

September 25, 2008